

BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH

FILED

JAN 04 2011

**SECRETARY, BOARD OF
OIL, GAS & MINING**

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IN THE MATTER OF FORMAL	:	DIVISION'S REQUEST TO
RULEMAKING TO AMEND THE	:	COMMENCE FORMAL
MINERALS REGULATORY PROGRAM	:	RULEMAKING
R647 RULES FOR ANNUAL FEE AND	:	
REPORT DEADLINES	:	DOCKET NO. 2011-002
	:	CAUSE NO. RMNRL-2011-01

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The Division of Oil, Gas & Mining ("Division") hereby requests that the Board of Oil, Gas & Mining ("Board") commence formal rulemaking to amend certain of the rules in the Minerals Regulatory Program (Utah Admin. Code R647) primarily for the purpose of consolidating annual fee and report deadlines.

The Division hereby requests that the Board at its hearing on February 23, 2011 take formal action pursuant to the Utah Administrative Rulemaking Act (Utah Code §§ 63G-3-101 through 702(2011)) to: (1) file the proposed rule amendments attached to this Request in accordance with the requirements of that Act; (2) schedule a public hearing allowing for comments and an opportunity for hearing; and (3) after consideration of all comments, take further action as appropriate to formally amend R647-2: Exploration, R647-3: Small Mining Operations, and R647-4: Large Mining Operations as the Board finds proper and appropriate.

BACKGROUND

The Division has recommended that the rules pertaining to the Minerals Program be amended to create process efficiencies for the Division and mineral mining operators. The proposed amendments would delay the deadline for an Exploration Progress Report in R647-2-115 from December 31 to January 31, thus establishing one consistent deadline for all annual reports. The proposed amendments would also delay the annual fee deadline for all permittees

from the last Friday in July until the annual reports are due, i.e. January 31. The annual fee would still be collected in the same state fiscal year. Thus, annual fees and annual reports would be due on one consistent date of January 31.

The proposed amendments also correct one word in the Small Mining Operations rule, R647-3-105, which currently requires an operations map to include “exploration” activities and the proper term should be “small mining” activities in this rule. Maps of exploration activities are required in the Exploration rule at R647-2-105.

The Division commenced an informal rulemaking process with a letter to the Board dated October 19, 2010 and a briefing to the Board on October 27, 2010 on the proposed amendment of the Minerals Regulatory Program rules on this subject. The Division subsequently issued a letter dated October 28, 2010 to the Informal Rules Review Group seeking comments on the proposed rule changes by November 29, 2010. In addition, the Division posted notice of the proposed rule amendments on the Division website. Three comments were received, all in support of the proposed amendments.

The informal rulemaking process concluded on December 8, 2010 with a public briefing before the Board. The Division provided a summary of the actions taken and the comments received. No parties spoke in opposition to the proposed amendments at the briefings on October 27, 2010 and December 8, 2010.

The proposed rule amendments are attached, dated December 15, 2010. If the Board decides to commence formal rulemaking, the proposed amendments will be filed with the Division of Administrative Rules via an eRules filing. Provided the eRules filing can be completed by March 1, 2011 as expected, the proposed rule amendments will appear in the Utah State Bulletin on March 15, 2011. The Board may take public comment at a Board hearing on the proposed amendments after publication in the Utah State Bulletin. A public hearing may be held as part of the regularly scheduled Board hearing on March 23, 2011.

A minimum 30-day comment period extending through April 14, 2011 is required by the Utah Administrative Rulemaking Act. Assuming no change to the plan for rule amendment, the Board could grant its final approval at the regular hearing day on April 27, 2011. The changes could be made effective on the day of the April Board Hearing, since it would meet the requirement of no fewer than seven calendar days after the close of the public comment period.

REQUESTED ACTION

The Division requests that the Board commence the formal amendment of R647-2, R647-3, and R647-4: order the Division to file the proposed rule amendments with the Division of Administrative Rules; set a date for a public hearing, allowing the necessary time for public comment and consideration of comments; and based upon comments received and other considerations as it finds appropriate take necessary action to formally adopt the rule amendments as shown on the attached exhibit and such additional action as it may find appropriate.

DATED this 4th day of January, 2011.



Steve Alder,
Assistant Attorney General
For Utah Division of Oil, Gas, & Mining.

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing DIVISION'S REQUEST TO COMMENCE FORMAL RULEMAKING for Docket No. 2011-002, Cause No. RMNRL-2011-01 to be mailed with postage prepaid, this 4th day of January, 2011, to the following:

Michael S. Johnson
Assistant Attorneys General
Utah Board of Oil, Gas & Mining
1594 West North Temple, Suite 300
Salt Lake City, UT 84116
Via Email

Todd Bingham
Utah Mining Association
136 South Main Suite 709
Salt Lake City, UT 84101



Steve Alder

Utah Division of Oil, Gas & Mining
Rulemaking Process: Commence Formal
Minerals Annual Fee and Report Deadlines
December 15, 2010

R647-2. Exploration.

R647-2-101. Filing Requirements and Review Procedures.

1. Prior to the commencement of exploration, a Notice of Intention to Conduct Exploration (FORM MR-EXP) containing all the required information must be filed with and determined complete by the Division and the Division shall have approved the form and amount of reclamation surety. It is recommended that the notice of intention be filed with the Division at least 30 days prior to the planned commencement of exploration.

2. Within 15 days after receipt of a Notice of Intention to Conduct Exploration (FORM MR-EXP), the Division will review the proposal and notify the operator in writing that the notice of intention is:

2.11. Complete and all required information has been submitted; or

2.12. Incomplete, and additional information as identified by the Division will be required.

The Division will review and respond to any subsequent filings of information within 10 working days of receipt.

3. If more than five acres of disturbance are planned, a detailed exploration development and reclamation plan must be included in the notice of intention and approved by the Division.

4. The Division will review and approve or disapprove:

4.11. The form and amount of reclamation surety, and;

4.12. Any variances requested under R647-2-107, 108, or 109, regardless of the number of surface acres of disturbance planned.

5. Developmental drilling conducted within an already approved disturbed area with approved surety does not require submittal of a Notice of Intention to Conduct Exploration (FORM MR-EXP).

6. A permittee's retention of a notice of intention shall require the paying of permit fees as authorized by the Utah Legislature. The procedures for paying the permit fees are as follows:

6.11. The Division shall notify the operators of record annually of the amount of permit fees authorized by the Utah Legislature for Exploration.

6.12. Fees are due ~~[beginning July 31, 1998 and thereafter annually, by the last Friday of July as authorized by the Utah Legislature]~~ annually by the deadline in R647-2-115 for reports.

6.13. A permittee may avoid payment of the fee by complying with the following requirements:

6.13.11. A permittee will notify the Division of a desire to close out a notice of intention by checking the appropriate box of the permit fees billing form.

6.13.12. The permittee will then arrange with the Division for an onsite inspection of the site to assure that all required reclamation has been performed. If an inspection reveals that an area is not yet suitably reclaimed, then a new billing notice will be issued and the permittee will be given 30 days from the date of the onsite inspection to pay the fee.

R647-2-115. Reports.

On or before ~~[December]~~ January 31st of ~~[the year of filing of a Notice of Intention to Conduct Exploration (FORM MR-EXP)]~~ each year, the operator conducting exploration must submit a Mineral Exploration Progress Report (FORM MR-EPR), which describes any unusual drilling conditions, water encountered, hole plugging measures, and reclamation activities conducted.

R647-3. Small Mining Operations.

R647-3-101. Filing Requirements and Review Procedures.

1. Prior to commencement of operations, a Notice of Intention to Commence Small Mining Operations (FORM MR-SMO) containing all the required information must be filed with and determined complete by the Division and the Division shall have approved the form and amount of reclamation surety. It is recommended that the notice of intention be filed with the Division at least thirty (30) days prior to the planned commencement of operations.

2. Within 15 days after receipt of a Notice of Intention, the Division will review the proposal and notify the operator in writing;

2.11. That the notice of intention is complete and all required information has been submitted; or,

2.12. That the notice of intention is incomplete, and additional information as identified by the Division will be required.

2.12.111. The Division will review and respond to any subsequent filings of information within 10 working days of receipt.

3. The Division will review and approve or disapprove:

3.11. The form and amount of reclamation surety (R647-3-111), and

3.12. All variances requested from Rules R647-3-107, 108, and 109, regardless of the number of surface acres of disturbance planned.

4. The operator must notify the Division no later than 30 days after beginning small mining operations.

5. A permittee's authorization under a notice of intention to conduct small mining operations shall require the paying of permit fees as authorized by the Utah Legislature. The procedures for paying the permit fees are as follows:

5.11. The Division shall notify the operators of record annually of the amount of permit fees authorized by the Utah Legislature for

5.11.11. Small Mining Operations (less than 5 disturbed acres).

5.12. Fees are due ~~[beginning July 31, 1998 and thereafter annually, by the last Friday of July as authorized by the Utah Legislature]~~ annually by the deadline in R647-3-117 for reports.

6. A permittee may avoid payment of the fee by complying with the following requirements:

6.11. A permittee will notify the Division of a desire to close out a notice of intention by checking the appropriate box of the permit fees billing form.

6.12. The permittee will then arrange with the Division for an onsite inspection of the site to assure that all required reclamation has been performed. If an inspection reveals that an area is not yet suitably reclaimed, then a new billing notice will be issued and the permittee will be given 30 days from the date of the onsite inspection to pay the fee.

R647-3-105. Project Location and Map.

The notice of intention shall include a location map and an operations map. Each map shall be plotted at a scale to accurately identify locational landmarks and operations details.

1. The general location map shall be the scale of a USGS 7.5 minute series map or equivalent (1"=2000') and identify new or existing access roads.

2. The operations map (1"=200' or other scale as determined necessary by the Division) shall identify:

2.11. The area to be disturbed;

2.12. The location of any existing or proposed operations including access roads, drill holes, trenches, pits, shafts, cuts, or other planned ~~[exploration]~~small mining activities; and

2.13. Any adjacent previous disturbance for which the operator is not responsible.

R647-3-117. Reports.

1. On or before January 31 of each year, unless waived in writing by the Division, each operator conducting small mining operations must file an operations and progress report (FORM MR-AR) describing its operations during the preceding calendar year, including:

1.11. The location of the operation and the number and date of the applicable Notice of Intention;

1.12. The gross amounts of ore and waste materials moved during the year, as well as the disposition of such materials;

1.13. New surface disturbances created during the year;

1.14. The reclamation work performed during the year.

2. The operator shall keep and maintain timely records relating to his performance under the Act and still make these records available to the Division upon request.

R647-4. Large Mining Operations.

R647-4-101. Filing Requirements and Review Procedures.

Prior to commencement of operations, a Notice of Intention to Commence Large Mining Operations (FORM MR-LMO) containing all the required information must be filed with and approved by the Division and the Division shall have approved the form and amount of reclamation surety.

1. Within 30 days after receipt of a Notice of Intention, or within 30 days after receipt of any subsequent submittal, the Division will complete its review and notify the operator in writing:

1.11. That the notice of intention is complete; or

1.12. That the notice of intention is incomplete, and that additional information as identified by the Division will be required.

2. Within 30 days after receipt of the notice of intention or within 30 days following the last action of the operator or Division on the notice of intention, the Division shall reach a tentative decision with respect to the approval or denial of the notice of intention.

Notice of the tentative decision will then be published in accordance with Rule R647-4-116.

3. Division approval of the notice of intention and execution of the Reclamation Contract (FORM MR-RC) by the operator shall bind the Division and the operator in accordance with the Act and implementing regulations; and, shall enable the operator to conduct mining and reclamation activities in accordance therewith.

4. The operator must notify the Division within 30 days of beginning mining operations.

5. A permittee's retention of an approved notice of intention shall require the paying of permit fees as authorized by the Utah Legislature. The procedures for paying the permit fees are as follows:

5.11. The Division shall notify the operators of record annually of the amount of permit fees authorized by the Utah Legislature for the following notices of intention.

5.11.11. Large Mining Operations (less than 50 acres) (fees calculated on the disturbed acreage permitted/bonded).

5.11.12. Large Mining Operations (greater than 50 acres) (fees calculated on the disturbed acreage permitted/bonded).

5.12. Fees are due ~~[beginning July 31, 1998 and thereafter annually, by the last Friday of July as authorized by the Utah Legislature]~~ annually by the deadline in R647-4-121 for reports.

5.13. A permittee may avoid payment of the fee by complying with the following requirements:

5.13.11. A permittee will notify the Division of a desire to close out a notice of intention by checking the appropriate box of the permit fees billing form.

5.13.12. The permittee will then arrange with the Division for an onsite inspection of the site to assure that all required reclamation has been performed. If an inspection reveals that an area is not yet suitably reclaimed, then a new billing notice will be issued and the permittee will be given 30 days from the date of the onsite inspection to pay the fee.

R647-4-121. Reports.

1. On or before January 31 of each year, unless waived in writing by the Division, each operator conducting large mining operations must file an Annual Report of Mining Operations (FORM MR-AR) describing its operations during the preceding calendar year. Form MR-AR, includes:

1.11. The location of the operation and file number of the approved notice of intention;

1.12. The gross amounts of ore and waste materials moved during the year, as well as the disposition of such materials;

1.13. The reclamation work performed during the year and new surface disturbances created during the year.

2. The operator shall include an updated map depicting surface disturbance and reclamation performed during the year, prepared in accordance with Rule R647-4-105.

3. The operator shall keep and maintain timely records relating to his performance under the Act, and shall make these records available to the Division upon request.